

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE COMPLAINT)	C - 42
OF PATSY HERRICK (Complainant),)	
AGAINST)	
THE SOUTHERN PUBLIC POWER)	ORDER
DISTRICT OF GRAND ISLAND,)	
NEBRASKA (Respondent).)	

On the 25th day of January, 2008, the above-captioned matter came on for consideration before the Nebraska Power Review Board (the Board). The Board, being fully advised in the premises, and upon reviewing said application and all filings, information, and evidence submitted to the Board, HEREBY FINDS AS FOLLOWS (references to testimony are designated by a "T" followed by the transcript page, then the lines upon which the testimony appears, while references to exhibits are designated by "Exh.):

FINDINGS OF FACT

1. That on the 11th day of December, 2007, Patsy Herrick (Complainant) filed a formal Complaint with the Board against the Southern Public Power District (Southern) under the provisions of Neb. Rev. Stat. § 70-1017 and the Board's Rules of Practice and Procedure at Title 285, Nebraska Administrative Code, Chapter 3, section 8. (Exh. 1). The application was designated "C-42."
2. In the Complaint, Complainant alleged that Southern engaged in discrimination against her when it required that she pay a \$150 deposit prior to switching

an account into her name. Complainant alleges that she does have a payment history, since she signed the payment checks for an account with Southern for many years. (T54:8-16). Complainant alleges that Southern discriminated against her based on her gender. (Exh. 2).

3. In its Reply, Southern generally denied any claims of discrimination against Complainant. (Exh. 6). Southern repeated its denial during testimony. (T49:20-22).

4. That a written Notice of Complaint and Notice of Hearing was sent to Complainant and Southern. (Exh. 4). Pursuant to the notice, a hearing was held on this matter before the Board on January 25, 2008. A separate complaint had been filed simultaneously by Leonard Herrick, Complainant's husband, based on similar underlying facts and circumstances. Due to the presence of related facts and similar subject matter, the parties agreed to consolidate the two hearings, although each Complaint was to be addressed separately (T6:15-23).

5. Leonard Herrick had an account with Southern from November 1990 to the present, under account #64303301. (Exh. 1). Leonard Herrick had a second account with Southern, account # 64322600, beginning in March 2000. (T11:17-19; Exh. 1). The second account serves a well that provides water for cattle (for purposes of clarity, account # 64322600, which is the focus of the dispute, will be referred to as the "farm account"). (T14:9-11; T20:4-9; Exh. 1). Complainant also receives electric service from Southern at her residence, which is located in a different part of the same underlying property as the farm account. (T23:11-18). The property where both the farm account and the residence are located is currently owned by a Mr. Len Herrick. (T22:21 to 23:18;

T31:17-22). Len Herrick is Patsy and Leonard Herrick's son. (T12:25 to 13:1).

Although it is uncontested that the property has been in Len Herrick's name since 1999 (T14:12-14; T19:22), Len Herrick's legal rights to the property is currently involved in a legal dispute. (T29:11-21)

6. In May 2007, Complainant and Leonard Herrick contacted Southern to have the farm account transferred into Complainant's name. Southern informed them that Complainant would be required to pay \$150 in order to transfer the account. Complainant and her husband decided to leave the farm account in Leonard Herrick's name. (T11:10-17; T33:18-20; Exh. 2).

7. Southern considered the \$150 it requested from Complainant to transfer the farm account to her name to be a prepayment. At the time of Complainant's request, no determination had yet been made by Southern regarding whether Complainant had an adequate credit rating that would obviate the need to require a deposit. (T41:20-23). A prepayment is required in order to allow an applicant to open a new account or transfer an existing account immediately. Southern then has the opportunity to determine whether a deposit is necessary. If Southern determines that the applicant does not have a satisfactory credit rating, the prepayment is converted into a deposit. If Southern determines the applicant has a satisfactory credit rating, Southern will return the prepayment to the applicant in the form of a credit against his or her future electric bills. (T41:2-19; Exh. 8, page 2). Southern's actions to request the prepayment from Complainant followed the procedures set out for Existing Facilities in Southern's Policy

and Procedures, Applications for Service (other than irrigation), Section No 22.01. (Exh. 8, page 2).

8. Although Complainant signed the checks and made the monthly payments to Southern on the farm account, the account was actually in Leonard Herrick's name. (T13:14-16; Exh. 9). The farm account had never been shut off or disconnected due to late payments. (T13:12-14; T50:17-19). Then sometime between early September to November 2007, Leonard Herrick received notification that the service to the farm account had been changed to Len Herrick's name. (T11:19-22; Exh. 1). Complainant and her husband contacted Southern and had the farm account service transferred back into Leonard Herrick's name. (T30:24 to 31:2; T38:23-25). Shortly thereafter, Southern again notified Leonard Herrick that the farm account service had been transferred back into Len Herrick's name. (T12:2-6; T31:17-19).

9. A company doing business as Glass Gardens rented the property where the farm account is located. Leonard Herrick is the president of the company, Len Herrick is the vice-president, and Complainant is the secretary. The property was subleased to another individual for use of his cattle, including the right to water his cattle at the well served by the farm account. Apparently as a direct result of changing the name on the farm account, Len Herrick began receiving the rental payments instead of Complainant, which forced Complainant's rental operation out of business. (T21:11 to 22:7; T22:21 to 23:10; T24:22 to 28:10). The business arrangements are not entirely clear, so the Board is uncertain why Complainant or Len Herrick received the rental payments instead of Glass Gardens, or why this would force only Complainant out of business, when she was

secretary of the company renting the property from Len Herrick. However, it is not necessary to sort out the specific business relationships between the parties involved in order to arrive at a decision in this matter.

10. Southern's president and chief executive officer, Gary Hedman, testified that because the farm account was in Leonard Herrick's name, Southern's standard practice is to attribute the payment and credit history for the account to the person named on the account. This is so despite the fact that Complainant was the party actually writing out and signing the checks. (T50:3-8). Mr. Hedman testified that Southern has encountered similar situations involving divorces. In those situations, although both spouses have lived in the house for many years, only one has had his or her name on the account. When the spouse that did not have the account in his or her name applies to open a new account, they are required to pay a prepayment or deposit. The policy looks only to whose name is on an existing account, which thereby creates a credit rating with Southern, and has nothing to do with the person's gender. (T50:8-16).

11. Southern estimated that slightly less than half of the new accounts with Southern eventually are required to have a deposit. (T51:22-24).

12. Southern allows customers or applicants without a credit rating to obtain service, but Southern's written policy states that Southern may "request a cash deposit to guarantee payment of bills for service rendered." (Exh. 7, page 1). Southern's policy also states that "In the establishment of credit there shall be no discrimination because of Customer's race, creed, color, national origin or sex." (T39:19-25; Exh. 7, page 1).

13. Len Herrick was not required to place a deposit in order to transfer the farm account from Leonard Herrick's name to his name. (T40:4-14). Likewise, Leonard Herrick had not been required to provide a deposit or prepayment when he originally opened the farm account. (T40:1-11). Testimony indicated that Southern determined that Len Herrick had established a satisfactory credit rating to obviate the need for a deposit. (T40:7-11). However, it is not clear upon what basis Southern made its decision.

CONCLUSIONS OF LAW

14. Pursuant to Neb. Rev. Stat. § 70-1017 and the Board's Rules of Practice and Procedure, Title 285, Nebraska Administrative Code, Chapter 3, § 008, the Board has jurisdiction to conduct a hearing and render a determination on Complaints filed by any customer of a power supplier if certain issues are involved. The Board's jurisdiction extends to allegations that a power supplier and an applicant for electric service cannot agree upon any of the terms under which service is to be furnished, or if the applicant alleges that the supplier is not treating all customers and applicants fairly and without discrimination within the same rate class.

15. Complainant alleges that Southern discriminated against her based on her gender when it required her to pay a prepayment or deposit in order to switch the farm account from Leonard Herrick's name into Complainant's name despite her years of good payment history. She alleges that Len Herrick, a male, was not required to pay such a deposit when the farm account was switched into his name. If Complainant were to show that the reason for requiring her to pay a prepayment to transfer an account into her name

when Len Herrick was not required to pay a prepayment to transfer the same account into his name was due to Complainant's gender, Southern would have engaged in prohibited discriminatory behavior. Pursuant to Neb. Rev. Stat. § 70-1017, the Board therefore finds it does have jurisdiction over Complainant's allegations.

16. The evidence indicates that the payment Complainant was required to make in order to transfer the farm account into her name was actually a prepayment and not a deposit. The prepayment would have allowed her to switch the service immediately, after which Southern would determine if she needed to maintain a deposit. Since Complainant decided not to pay the prepayment, it is unknown whether Southern would have ultimately determined that because for many years she was the party that had faithfully paid the bills on the farm account held in Leonard Herrick's name, no deposit was necessary and her prepayment would be credited against her new account. The record does not address whether Len Herrick was required to pay a prepayment when he switched the farm account into his name, only that he was not required to pay or maintain a deposit. These facts do not provide a sufficient basis upon which the Board can conclude that Southern engaged in discrimination based on gender.

17. Complainant did not have an account history with Southern. Although Complainant has an admirable record of providing timely payments to Southern on the farm account, the account was listed under Leonard Herrick's name, not Complainant's. Leonard Herrick was the party legally responsible for payment of the electric bill. For Southern's purposes, the credit rating was therefore established in Leonard Herrick's name alone. This provided Southern with a rational, gender-neutral reason for requesting

a prepayment from Complainant. As mentioned previously, the record does not provide specific evidence whether Len Herrick had to make a prepayment when he switched the farm account to his name, only that he did not have to make or maintain a deposit. Although it is certainly possible that Southern did not require Len Herrick to make a prepayment, the record is silent on this particular point. Since the two terms have separate and distinct meanings for Southern's purposes of establishing new electric service and billing, the Board cannot simply assume that Len Herrick was not required to submit a prepayment. The Board therefore cannot conclude that Southern treated Complainant and Len Herrick different based on their gender concerning whether they were required to submit a prepayment when each party requested to switch the farm account into their respective names, or that Southern treats female customers or applicants in a different manner from male customers or applicants.

18. Southern's requirement that Complainant submit a prepayment in order to switch the farm account into her name complies with the procedures set out in Southern's written policy covering the topic of service to existing facilities. The record does not adequately show whether Southern complied with its policy concerning Len Herrick. Southern's policy requires all applicants who are not established customers of known credit worthiness to submit a prepayment. The record indicates that Len Herrick had no existing account with Southern when he switched the farm account into his name, but it is unclear whether he was required to submit a prepayment. The testimony indicates he made no deposit, but since the terms deposit and prepayment are separate and distinct

terms as used by Southern, the Board cannot assume that Len Herrick was not required to make a prepayment.

19. Even if it were shown that Complainant was required to make a prepayment and Len Herrick was not requested to make a prepayment, the Board finds that this fact, in isolation, does not demonstrate that Southern engages in discrimination against its female applicants or customers, or that it necessarily did so in Complainant's instance. Based on the evidence adduced at the hearing, the Board finds that there is not sufficient evidence supporting a conclusion that Southern discriminated against Complainant due to her gender, or that Southern discriminates against its female applicants or customers in general.

ORDER

That during that part of its January 25, 2008, public meeting held subsequent to the hearing on C-42, a majority of the members of the Power Review Board (5 ayes, 0 nays) voted to approve a motion finding that the Board deny relief to Complainant due to insufficient evidence showing that Southern engaged in discrimination against Complainant.

IT IS THEREFORE THE FINDING OF THE NEBRASKA POWER REVIEW BOARD that, pursuant to the Board's action during its public meeting held January 25, 2008, there is insufficient evidence of discrimination demonstrated on the part of Southern Public Power District against Patsy Herrick based on gender when Southern

Public Power District requested prepayment from Patsy Herrick in order to switch the name on account # 64322600 from Leonard Herrick to Patsy Herrick.

NEBRASKA POWER REVIEW BOARD

BY Don Kohtz
Don Kohtz, Chairman

DATE: 02/29/08

CERTIFICATE OF SERVICE

I, Timothy J. Texel, Executive Director and General Counsel for the Nebraska Power Review Board, hereby certify that a copy of the foregoing **Order** in complaint C-42 has been served upon the parties by mailing a copy of the same to the following persons at the addresses listed below, via certified United States mail, return receipt requested, first class postage prepaid, on this 29th day of February, 2008.

Patsy Herrick
949 31 Road
Franklin, NE 68939

Gary Hedman
President and CEO
Southern Public Power District
P.O. Box 1687
Grand Island, NE 68802

Timothy J. Texel
Timothy J. Texel